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CONCUBINES UNDER THE HINDU LAW.

In ancient and modern India concubinage is recognized as a definite social and legal relation from which certain legal consequences follow as a matter of law. As between the parties to the relationship, it satisfies all the secular purposes of the marital tie and is at the same time devoid of the subordination of one party to the other imposed on the marital tie by law and religion. It is proposed here to examine the circumstances under which, according to the Hindu Law, this stage of relationship arises, and the incidents of such relationship.

The particular term used by Sanskrit writers to denote a concubine is *Avarudha* (Avarudha=अवरुद्धा). This term is so used by Vignaneswara in his treatise *Mitakshara* in one section of the chapter on *Dayabhaga*. In that section, which in Colebrooke's translation is Section 1, Chapter II, Vignaneswara establishes the Hindu widow's right to inherit to her separated husband, after a long consideration of the subject in which he discusses the texts which have a bearing and which may be considered to have a bearing on the subject In this discussion Vignaneswara quotes two texts (see Placita 27 and 28), one of Katyayana and the other of Narada, which apparently may be deemed adverse to the claim of a Hindu widow to inherit to her husband. Colebrooke translates Katyayana's text into "Heirless property goes to the King deducting, however, a subsistence for the females as well as funeral charges", and he renders Narada's text into "Except the wealth of a Brahmana (Property goes to the King on failure of heir); but a King who is attentive to duty should give a maintenance to the women of such persons. The law of inheritance has thus been declared." The Sanskrit word used by Katyayana in place of "females" in the translation is योषित् (Yoshith) and that used

by Narada in place of "women" in the translation is स्त्री (Sthri). Vignaneswara's explanation of these passages is that they do not refer to widows, the term used to denote them being *Pathnis* पत्नी but that they refer to *Avarudhas.* Colebrooke has rendered *Avarudhas* into "women kept in concubinage." These two texts and Vignaneswara's interpretation thereof furnish the basis of a concubine's right to maintenance under the Hindu Law, the only right which she could claim at the best thereunder.

The questions which arise for consideration here are: Who is an *Avarudha* or concubine under the Hindu Law and, what are her rights and obligations if any (*a*) with regard to her paramour himself, (*b*) with regard to his heirs who have taken his property by inheritance, and (*c*) with regard to her paramour's co-parceners who have taken by survivorship?

As to the first question, *viz.*, who is a concubine, she is succintly stated, in the chapter of the *Mitakshara* in which the texts declaratory of her right appear, to be an Avarudha. Who an *Avarudha* is, and what conditions should be satisfied before a female could be called an *Avarudha,* are not explained by Vignaneswara in the translated portions of his commentaries on *Yajnavalkya.* If he has explained and defined the term in any other portion of his treatise, that explanation and definition are applicable to the context in question as well, the principle being that when an author has explained a particular term in one portion of his book it should be taken that he meant to convey the same meaning wherever the term has been used by him in other portions of the same book. There is a precedent for doing so in his explanation of the term *Sapinda* in one portion of *Mitakshara, viz.,* the chapter on *Achara,* which has been held to be applicable to the term when occurring in the chapter on Inheritance. Vignaneswara has explained and defined the term *Avarudha* in the *Stri Sangrahana* chapter of the *Vyavahara Kanda* of his book, which specifies the penalty for unlawful intercourse with several classes of females. In Sloka 290 of *Yajnavalkya* quoted in that chapter *Yajnavalkya* prescribes the punishment for intercourse with *Avarudhas.* Vignaneswara his commentaries on that Sloka, explains and defines who an *Avarudha* is. He says "उक्तलक्षणा वर्णस्त्रियः दास्यः ता एव स्वामिना शुश्रूषाहानि व्युदासार्थं गृह एव स्थातव्यमित्येवं पुरुषान्तरोप भोगतो निरुद्धाः अवरुद्धाः"

—"*Dasis* are caste females of stated particulars. Those (*Dasis*) alone who are prevented (or restrained) from enjoyment of other men and who are (ought to be) kept in the house itself by her master, so that there might be no violation (or interruption) of her service (to her master)." From these commentaries it will be clear that three conditions should be satisfied before a female could be called an Avarudha—she should be a Dasi; she should have been kept under the same roof as the paramour (just as a of the member family of the paramour), and (3) she should be immune from intercourse with others than her paramour.

It is now needless to consider the ancient Sanskrit legal treatises to learn who a *Dasi* is. The learned Judges of the several High Courts have considered the subject fully, when they had to consider who a *Dasiputra* or Dasi's son is. The consideration as to who is a *Dasi* is a common factor in considering whether one is a *Dasiputra* or an *Avarudha*. The Calcutta High Court has taken one definite view — *Narain Dara* v. *Rakhal*[1] — that a *Dasi* refers only to a slave, and that a continuous concubine would not come under the purview of the term *Dasi*. But the other High Courts hold that an unmarried Sudra female kept in concubinage comes within the denotation of the term *Dasi*. And with reference to this view, the Madras High Court in *Krishnaiyyen* v. *Muthusami*[2] remark at page 411: We should entertain no doubt on this subject on the authority of the decisions in this Presidency, Bombay and Allahabad." Again in the same case, at page 417, they observe: "Although the primary meaning of the word *Dasi* was a slave, it included also a concubine or woman of the servile class in a secondary sense and there is reason to hold, on the texts, that an unmarried Sudra woman kept as a continuous concubine came within its scope." The importance of this view for our present purpose is that one necessary qualification of a *Dasi* is that she should be unmarried. If she be not unmarried, she will not be a *Dasi*; her sons would not be *Dasiputras*, and her connection with her paramour should not be recognised as one of *Avarudha* or concubine. This negative view of the position of a *Dasi* has been steadily kept up by the High Courts and Courts subordinate thereto. In *Parisi Naidu* v. *Bangaru Naidu*[3]

1. (1876) I. L. R. 1 C. 1, 2. (1883) I. L. R. 7 M. 407.
3. (1869) 4 M. H. C. R. 204.

the Madras High Court observe : "We are of course not inclined to extend the legal recognition of concubinage among Sudras beyond what the terms of the law require and we think that the phrase 'other unmarried Sudra women' used by authors alluded to above may rightly be applied strictly and establishes that the illegitimate son of a Sudra by a Sudra woman living with him in adultery would be excluded from participating in the family property. * * * The fair result of these express authorities is to indicate that though the law recognises concubinage among Sudras and admits the illegitimate sons of a concubine to participate in the estate of the father along with legitimate sons by his wife, yet that the illegitimate sons will be excluded from this privilege where the intercourse between their parents was one in violation, of or forbidden by, the law." In *Sikki* v. *Vencatsawmi*[1] in which the Madras High Court rejected the claim for maintenance set up by a discarded concubine against her paramour during his life the District Judge who had also rejected her claim says : " The plaintiff, being an adulteress, could never have been a female slave or concubine within the meaning and definition of the term given by the Hindu lawyers." If this requisite of a *Dasi* be kept in mind when a female claims as an *Avarudha*, it would follow that she could not be an *Avarudha* if she be not unmarried, *i. e.*, if her connection with her paramour is adulterous.

This position could be based also on grounds of public policy. No legal claim of right could accrue to parties to a relationship which has its origin in criminality. Hindu law is distinct and emphatic in its condemnation of adultery as a crime. In *Vencatachella Chetty* v. *Parvatham*[2] the High Court observe : " There can be no question of the strong terms of condemnation in which Hindu Law denounces adultery * * Even if adultery had been condoned or connived at, it does not appear that the Hindu law would have regarded the marital tie as dissevered or the connection otherwise than adulterous," and in this connection they refer to a text of Prajapathi quoted in *Dattaka Mimamsa*, S. VIII, Verse 4, as showing that an adulteress is still regarded up to her death as a member of the family of the husband. Again in *Bai Rahi* v. *Govinda Valad Teja*[3] the Bombay

1. (1875) 8 M. H. C. R. 144.

2. (1875) 8 M. H. C. R. 143. 3. (1875) I. L. R. 1 B. 116.

High Court observe: "That adultery was regarded and punished by Hindu Law as a crime of grave character is abundantly shown by the 19th chapter of the *Vyavahara Mayukha* and the ancient *Smrithi* texts therein quoted." In the face of such distinct pronouncements of the criminal character of adulterous connection it would be opposed to public policy to recognise legal rights as accruing to the parties to such a connection. The case of an adulteress claiming maintenance as a concubine is different from the case of a similar claim put forward by an illegitimate son who is the offspring of an adulterous connection. This latter claim is sustainable under the Hindu Law. But the basis of such a claim is different. Such an illegitimate son is no party to the criminal transaction. He is not the architect of his legal position. The liability to maintain him is fastened by the law on his putative father as "the author of his being." His right to maintenance does not arise on the ground that he is a *Dasiputra*, which he is not as his mother is not a *Dasi* but arises by reason "of his having been recognised as his son" by the putative father (see *Bai Rahi* v. *Govinda Valad Teja*[1]) and by reason of his being "the natural son of his Hindu father and recognised by him as such" as their Lordships of the Privy Council observe in *Muthusami* v. *Venkatesvara*[2].

The result of the foregoing discussion is that if a woman had been married to another, her relationship with her paramour could not be that of an *Avarudha* or concubine under the Hindu Law. Under the Hindu Law, apart from cases under special local custom, the marital tie is indissoluble. In *Vencatachellam Chetty* v. *Parvathnam*[3] the Madras High Court suggest that an adulteress is still regarded up to her death as a member of the family of the husband. Again in *Subbaraya Pillay* v. *Ramasami*[4] they say: "Prostitution does not sever the legal relation and therefore the degradation of a woman in consequence of her unchastity does not in law entail a cessation of the tie of kindred between her and the members of her natural family or between her and the members of her husband's family." Again, in *In the matter of Ram Kumari*[5] the Calcutta High Court observe: "So far as the matrimonial bond is concerned such a view (*viz.*, that a

1. (1875) I.L.R. 1 B. 116. 2. (1868) 12 M. I. A. 270.
3. (1875) 8 M. H. C. R. 143. 4. (1891) I. L. R. 23 M. 191.
5. (1891) I. L. R. 18 C. 264.

degraded woman or an apostate is absolved from all civil obligations incurred before degradation or apostacy) would, we think, be contrary to the spirit of Hindu Law which regards that bond as absolutely indissoluble."

The view above set forth, that an adulteress could not claim to be a concubine under the Hindu Law, contradicts MAYNE'S view on the subject. He says in his learned treatise on *Hindu Law and Usage*: "Concubines are entitled to maintenance even though the connection with them is adulterous." His references in support of his position are, along with other texts of Sanskrit writers, the passages in the *Mitakshara* referred to above and two decisions of the Bombay High Court—*Khumkhor* v. *Munah Shankar*[1] and *Vrindavandas* v. *Yamuna*[2]. Neither the texts nor the decisions relied on by MAYNE enunciate that concubines are entitled to maintenance even though the connection be adulterous. Nor did the facts in those cases necessitate the enunciation of such a rule. In the former case, the parties belonged to the caste of Somapura Brahmins—a caste in which remarriage of widows and of women with the consent of their husbands during the latter's life is allowed by the custom of the caste. The former husband of the woman in the case, who had contracted a second marriage during his life without his consent, died before her, so that the connection was not adulterous at least thereafter. Further, in that case, the precise question was not raised as an objection to her claim, and the decision was on a reference, without the aid of arguments, the parties being unrepresented in the High Court. In the latter case, observations regarding adulterous connection would have been still more uncalled for. The woman had been living in her paramour's house almost from her infancy and never underwent marriage with any one. But in one case in Bombay—*Ningareddi* v. *Lakshmana*[3] —there is an observation of Mr. Justice *Crowe* (evidently *obiter*) that a concubine is entitled to maintenance though the connection was an adulterous one, and in so observing, the learned Judge probably gave utterance to the special view of the law in the Bombay Presidency where the general view of Hindu Law "that a Hindu concubine should never have been

1. (1873) 10 B.H.C.R. 381. 2. (1875) 12 B.H.C.R. 229.
3. (1901) 26 I. L. R. 26 B. 165.

married to any man" has in practice been discarded, as is observed in an earlier case—*Bai Rahi* v. *Govinda Valad Teja*[1]. In the result, MAYNE'S view is not the view of the general rule of Hindu Law but a deviation from it as a local exception. And this exceptional rule really proves the general rule that one essential condition of concubinage under the Hindu Law is that the woman should be unmarried, *i.e.*, that the connection should not be adulterous.

Now as to the second condition referred to above as deducible from Vignaneswara's definition of an *Avarudha*, *viz.*, that a concubine should have been kept under the same roof as the paramour (just as a member of the family). The passage in *Mitakshara* referring to this requisite mentions also the object of her being so kept; it is to avoid violation of, or interruption to, the service to her lord. The necessity for this condition has not arisen in judicial decisions as a specific point in issue; but there is enough in them to show that this view has been steadily kept up. In all the Bombay cases where maintenance was claimed or awarded to a concubine—*Khunkhor* v. *Munah Shankar*[2], *Vrindavandas* v. *Yamuna*[3], *Ningareddi* v. *Lakshmava*[4],—this condition was satisfied, and the women were being kept in the family house of the paramours practically in the position of married wives. In *Muthusami* v. *Vencateswara*,[5] when referring to the rights of illegitimate sons not *Dasiputras*, their Lordships of the Privy Council observe that "if it be established that the respondent was the natural son of his Hindu father and recognised by him as such, it is not essential to his title to maintenance that he should be shown to be born in the house of his father or of a concubine possessing a peculiar status therein." The District Judge, from whose judgment the appeal case of *Sikki* v. *Vencatasami*[6] arose, clearly perceived the distinction between a kept woman and a concubine and referred to the latter as one having a recognised status in the family of her paramour. The necessity of this condition could be easily perceived and argued from the next requisite of concubinage, *viz.*, that a concubine should have been exclusively kept by her paramour. It may be difficult, if

1. (1875) I. L. R. 1 B. 116.
2. (1873) 10 B. H. C. R. 381.
3. (1875) 12 B. H. C. R. 229.
4. (1901) I. L. R. 26 B. 165.
5. (1868) 12 M. I. A. 203.
6. (1875) 8 M. H. C. R. 144.

not impossible, to prove this latter condition, unless the precaution of keeping her under the same roof were adopted by the paramour.

The third requisite of concubinage, *viz.*, that the connection with her paramour should be exclusive, has been recognised by the Courts. The terms used by Vignaneswara say that she should have been restrained or prevented from enjoyment of others. That the necessity of this condition should have gone on undisputed, though we find no reference to the passage in the *Mitakshara* on the subject, is an unmistakable indication how in some respects the popular practice is based on an undercurrent of legal consciousness or has furnished the basis of legal rules. One reason why the connection should be exclusive is, that for it there could be no limitation of the number of persons whose estates would otherwise be liable to her claim for maintenance. Vignaneswara bases it on the same ground as her being kept under the roof of the paramour, *viz.*, that there might be no interruption or violation of her service to her master.

The next question for consideration is her rights. Her right, as concubine, are limited at best to a claim for maintenance. Even this claim is not legally sustainable as against her paramour during his life—*Sikki* v. *Vencatasami*[1], *Ningareddi* v. *Lakshmana*[2] and *Ramasami* v. *Buchanna*[3]. Though all systems of society would admit the moral right to maintenance of one who has ministered to the desires of another, still as the relationship is one which is based on the pure option of the parties to it, as neither of them is under an obligation, legal or moral, to continue the relationship, and in short, as the very essence of the relationship is the independence and equality of the footing from the view of either party, it is but equitable that no legal obligation could arise by reason of such a relationship during its continuance or after its termination during the life of both parties to it. These circumstances explain and justify the additional condition insisted upon, when the claim for maintenance is made as against the heirs of the paramour on the death of the latter, *viz.*, that she should have been kept till the death of the paramour and not discarded during his

1. (1875) M. H. C. R. 144. 2. (1901) I. L. R. 26 B. 165.
3. (1886) I.L.R. 23 M. 182.

lifetime. If she had been discarded during the paramour's lifetime itself he did not die even with a moral obligation on his back, and according to Hindu Law, before such a legal claim could be preferred against the heirs of a deceased person, the claim should have been either legal or moral at the time of the death of the deceased—see *Rangammal* v. *Echammal*[1]; *Janaki* v. *Nand Ram.*[2]

Next, as regards the concubine's claim for maintenance as against her paramour's heirs properly so called:—The Hindu Law could be taken to provide for them in this case also only by implication. As the texts stand, however, they apply only to the Sovereign who takes the property of a heirless deceased, and the implication is that the obligation is fastened on the King as the last heir, and that, just in the same way, it fastens on the other heirs who take before him.

The next and last question considered is the concubine's claim to maintenance as against the co-parceners of her deceased paramour, in favour of whom the paramour's interest in joint property has lapsed by survivorship. This case is unprovided for by the texts even by implication, and the proper view to take with regard to these exceptional claims under Hindu Law is that they should not be based or argued on general principles as the Bombay High Court observe in *Parvathi* v. *Ganapathi*,[3] when dealing with the claims of illegitimate daughters to maintenance, and that they should not be recognised or countenanced unless there are express texts in their favour. But it is needless to press this view to debar a concubine's claim for maintenance as against her deceased paramour's co-parceners. The very same result will be arrived at on consideration of the general principles of Hindu Law applicable to analogous cases. Whatever support there might be in Hindu Law for the position that a moral obligation may become a legal obligation in the hands of a person taking the assets of a deceased Hindu by inheritance, there is no warrant in the Hindu Law for holding that a moral obligation will be transformed into a legal obligation when the interest of a deceased Hindu in property lapses on his death

1. (1898) I.L.R. 22 M. 305. 2. (1888) I.L.R. 11 A. 194.
3. (1890) I.L.R. 15 B. 183.

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by the law of survivorship. In fact the application of such a rule to cases of survivorship would be anomalous in view of the fact that even a legal obligation like the ordinary debt of a deceased Hindu co-parcener does not avail against the operation of survivorship. Nor could the analogy of the claim for maintenance of illegitimate sons not *Dasiputras*, or of widows of deceased co-parceners, avail to the benefit of a claim for maintenance by a concubine against her deceased paramour's co-parceners. The former claims are legally sustainable even during the life of the putative father or the husband respectively. But the latter claim is at best only moral during the paramour's life.

K. SRINIVASA AIYANGAR.

TRANSLATION.

Apararka's Commentary
ON
Yagnavalkya

NOTE:—The Text of Yagnavalkya is given in antique, the Commentary of Apararka in Small Pica, and the quotations in the Commentary are given in Long Primer—the types having been selected after the manner in which the several matters appear in the original as printed in Vol. 46 of the Anandasrama Series.

PARTITION OF PROPERTY.

Sloka 114.

Partition by Father.

Recovery of Debts and Pledges—two titles of law—have been dealt with; then, evidence relating to them also, both human and divine. Now, he (Yagnavalkya) begins Partition (another title of law).

114. If the father makes the division, he may make the division among the sons[1] as he desires[2]. He may give to the eldest a larger share[3] or all may become equal sharers.

1. Colebrooke adds "from himself." This may not be correct, having regard to the shares alloted to wives in Sloka 115 *infra*. Yagnavalkya himself gave his wives shares when he took Sanyasam. It may be that this is intended when the father retires either as a Sanyasi or Vanaprastha. (*Brihadaranya*, Ch. VI. Br. 5).

2. Colebrooke:—"at his pleasure." But the words "as he desires" are preferred, having regard to what follows in the commentary as to the word "desire."

3. Colebrooke:—"and either dismiss the eldest with the best share."

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Sankha says:—In the case of an only son, he (the father) may, if he desires, take two shares. Sloka 114.

Partition by Father.

Objection:—The desire to make the partition need not be mentioned. By being the maker of the division, it is realized. Of course, the individual does not become the "doer" without volition. The independent agent[1] is said to be the "doer" (agent).

Answer:—By being the maker of the partition, the desire to make the partition arises. Therefore by the words "इच्छयाविभजेत्" *i.e.*, "may make the division as he desires," is not meant the desire to make the division, but something else. By that word "इच्छा" "desire," to one son a smaller share, to another, a larger share, thus, unequal shares are meant. Therefore, the meaning is that the sons should be separated by shares (equal or)[2] unequal. Though partition only is implied in the word "विभजेत्" *i.e.*, "should partition", but not "the inequality of the partition," yet—whatever methods of preference such as are prescribed by the rules of preference:

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"The portion deducted for the eldest is the twentieth part of the heritage, with the best of all the chattels; for the middle most, half of that; for the youngest, a quarter of it."

All those are understood here. Therefore, the result is certain that by the words "इच्छयाविभजेत् सुतान्" (should divide the sons as he desires) the unevenness in partition at the pleasure of the maker of the division is ordained. In this behalf, Narada says:—

"To those among whom the father makes the partition, evenly or unevenly, the same (division) is the proper one, by reason of the father being the owner of everything."[4]

It cannot be said that this is for the purpose of conveying preferential shares[5], by reason of the words, "the father is the

1. स्वतन्त्रःकर्त्ता—Independent agent is the subject:—Borrowed from *Panini*.

2. The words in brackets have to be read in the context the same being necessary for an intelligible meaning.

3. Manu Ch. IX, § 112.

4. S. B. E., Vol. 33, p. 132. Narada, Ch. 13, § 15.

5. Cf. *Mitakshara*. Vignaneswara is of opinion that the unequal division by the father can only be in one of the ways prescribed by Manu as to preferential shares, etc. See *Mitakshara* commentary on this very sloka.

Sloka 114.

Partition by Father.

independent agent"; for, "the rule of preference is not by reason of the father's free agency but because of the Sastra." Brihaspati says:—

"Those for whom shares, even or uneven, have been allotted by the father, by them the shares should be adhered to accordingly; otherwise, (if they try to alter the arrangement), they shall be punished."[1]

Second answer:—If not, (if this be not so), in order to avoid the redundancy in the meaning of words (that arises) in the view that the "इच्छा" (desire) in the words "इच्छयाविभजेत् सुतान," *i.e.*, "may make a division as he *desires* among the sons", is attained even by his being the maker of the division, the meaning of exclusion, (namely) that the son's इच्छा (desire) is not the cause of the partition is adopted (with reference to the word इच्छा). Also Manu:—

"After the death of the father, the brothers being assembled may divide among themselves the paternal estate, they being incompetent (to do so) during their lifetime".[2]

Devala:—Sons after the father's death should divide the patrimony, they having no ownership (in the property) when the father is not disqualified and alive."

अस्वाम्य, *i. e.*, having no ownership, means, having no independent control.

Sankha and Likhita:—"Hereafter, partition of wealth:—When the father is alive, the sons shall not divide the wealth, even if it be property acquired by them subsequently, by reason of their dependence (on the father) in regard to wealth and dharma."

Narada:—"Where division is made of the patrimony by the sons, it is called by the learned—partition of the property—a title in law.[3]"

Here (the words) "patrimony" and "by the sons" are both used indicatively.[4] "That the father should make a division" is with reference to the self-acquired property of the father. In the "ancestral" property (*i.e.*, of the father's father, etc.) the right to make a partition is equal to the father as well as to the sons. So also

1. S. B. E., Vol. p. 370. Brihaspati, Ch. 25, § 4.

2 Manu, Ch. IX, § 104.

3. S. B. E., Vol. 33, p. 188. Narada Ch. 13, § I.

4. The meaning is that the words are more comprehensive in import than if literally understood.

Vishnu :—" If the father makes a division among the sons he may make the division as he pleases in respect of his self-acquired property." Sloka 114. Partition by Father.

Even in respect of the paternal property the sons sometimes become the division-makers.[1]

Therefore Narada says :—After the father the sons should partition the wealth equally.[2]

After laying down that the sons may partition after the father's death, he has said—

" When the mother has ceased to menstruate, when the sisters have been given away (in marriage) and the father has abstained from sexual enjoyment with his desires extinguished."[3]

it is understood that the sons may divide the wealth equally.

Sankha:—"Where the father becomes desireless, old or crooked in his ways or afflicted with a chronic disease, then division among the sons (is proper)."

Narada says :—"The father who is afflicted with chronic disease, who is irritable, or one who is absorbed in sensual pleasures or who acts contrary to Sastras, is not fit to make the division."[4]

अन्यथाशास्त्रकारि=one who violates what is ordained or forbidden. Even in the property acquired by the father, the absence of desire, etc., in the father become the cause of the independence of the sons to partition. If the mother is alive, the sons are not competent to divide.

So also Sankha says :—"The eldest (brother) should protect the wealth like the father. As to others, family is only a source of property [5]. When the father is alive, (the sons have) no independence. So also when the mother is alive."

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1. Cf S. B. E., Vol. 7, p. 67. Vishnu, Ch. 14, § 1. The second half does not seem to fit in with the argument. Hence the second half of the verse has been here treated as the words of the learned commentator himself. The second half in the S. B. E. is : "But in regard to wealth inherited from the paternal grandfather, the ownership of father and son is equal." S. B. E., Vol. 7, p. 68, Ch. 17, v. 2.

2. Cf. S. B. E., Vol. 33, p. 189, § 2.

3. Cf. S. B. E. Vol. 33, p. 189. Narada, Ch. 13, § 3.

4. Cf. S. B. E. Vol. 33, p. 193. Narada, Ch. 13, § 16.

5. The meaning is that they have no right in the management.

Sloka 114.

Partition by Father.

This (when the mother is alive) means when the mother is capable of looking after the family. What is said about the eldest being undivided with his younger brothers in wealth is to be understood when there are among them some who have not finished their education in the Vedas. If they are learned in the Vedas and their meaning and are well observant in *Agnihotra* sacrifice, etc., then division is preferable (to non-division).

So also **Manu** says:—"Thus they may live together or divide being desirous of Dharma (of doing religious duties). Dharma increases by division. Therefore division is conformable to Dharma."[1]

Vyasa:—"It is ordained that brothers should live united when the parents are alive. After their demise, Dharma increases to them when divided."

When the younger brothers owing to their immaturity (in age) are undivided with the elder in wealth, then, even the compulsory (sacrifices of) Vaisvadeva, etc., are not divided.

So also **Brihaspati**:—"The worship of the Manes, the Gods and the twice-born becomes single to people living by a single (common) cooking. The same should be practised in every house in the case of persons divided."

With regard to the abovesaid division by the father a special exception is mentioned by **Manu** to an unequal division:—

"Where all the undivided brothers earn wealth simultaneously (सह), there the father should never award unequal shares."

S. SRINIVASA AIYAR.

(*To be continued.*)

NOTES OF INDIAN CASES.

Sri Raja Chelikani Rama Rau *v.* The Secretary of State for India.—I.L.R. 33 M. 1.—The learned Judges in this case would seem to point out that the remarks in the case of *Secretary of State for India in Council* v. *Vira Rayan*[2] were based upon a misapprehension that the limitation provisions of the earlier Regulation (*i. e.*, of 1802) were repealed by Act IX of 1871. Of course the first schedule of Act IX of 1871 does not contain any reference to the Regulations—either to the Bengal Regulation of 1805 or the Madras Regulation of 1802. Act XIV

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1. Manu, Ch. IX, § 111. 2. (1888) I.L.R. 9, M. 175 at p. 184-185.

of 1859 does not purport by any schedule or other provision to repeal the prior regulation dealing with the law of limitation. That was because the Act of 1859, by S. 18, enacted that suits pending at the date of that Act or instituted within a period of two years from the date of the passing of that Act should be governed by the Regulations and not by that Act. The operation of the Act of 1859 was further suspended until the 1st January 1862 by Act XI of 1861. After the 1st of January 1862, the provisions of Act XIV of 1859, it was, that governed the limitation as to suits, etc. Regulation 2 of 1802 (Madras) and Regulations 3 of 1793 and 2 of 1805 (Bengal) have been repealed by Act X of 1861 excepting the section in those regulations dealing with limitation, *viz.*, S. 18 of Regulation 2 of 1802 and S. 17 of Regulations 3 of 1793. These sections were not repealed until the 1st of January 1862 as suits before that date were governed by those regulations. After Act XIV of 1859 came into operation and the limitation provisions of the Regulations had become spent they were repealed.

The Bengal Regulation (*viz.*, that portion of it which was still left unrepealed) was repealed by the Bengal Civil Courts Act (VI of 1871) while the corresponding Madras Regulation was repealed by the Madras Civil Courts Act. Hence there is no point in the statement that the earlier Regulations dealing with limitation do not find a place in the repealing schedule of the Limitation Act IX of 1871 which, it may be remembered, does not apply to suits instituted before the 1st day of July 1873. And hence there is no misconception whatever in the remarks of the learned Judges who decided *The Secretary of State for India in Council* v. *Vira Rayan*[1], and the remarks of the learned Judges in the case under notice are due evidently to some misconception of their own. Be this as it may, it is difficult to understand what exactly was the argument to which the learned Judges address themselves to meet in the above remarks.

The learned Judges seem also to think in this case that the title of the Crown to islands formed within 3 miles of the mainland is similar to the title by escheat, and for this they rely upon *the Secretary of State for India* v. *Kadir Kutti*[2]. The latter case, however, does not warrant the view taken

1. (1886) I.L R. 9, M. 175 at p. 184-185.
2. (1890) I.L.R. 13 M. at p. 369.

by the learned Judges. Evidently the learned Judges were referring to the following observations in the latter case when they say that the title of the Crown to islands in the sea or in the mainland is similar to the title by escheat:—"Otherwise, it might be conceivable that such new and unoccupied land should belong to the first occupant or to the Sovereign by a title similar to title by escheat"—*Collector of Masulipatam* v. *Cavaly Venkata Narrainappa*[1]. We do not think these observations in any way warrant the view which the learned Judges in the case under notice attribute to the decision in *The Secretary of State for India* v. *Kadir Kutti* [2]. The question in that case was as to the ownership of an accretion gradually formed from the bed of a tidal navigable river and brought about by artificial means. The learned Judges referred to the rule of English Law that the Crown is the owner of the soil in the bed of the navigable river up to high-water mark and state that that rule should be held applicable in this country in the absence of any local usage or statutory enactment to the contrary. An argument was advanced in that case that the above rule of English Law had no application to Malabar where there could be no presumption that waste lands are the property of Government. The learned Judges held that land covered by the water of the sea or of a tidal river could not be regarded as coming within the category of waste land and that if the Jenmi could be held entitled to land formed from the bed of a tidal river he must equally be held entitled to islands formed in the sea. They then addressed themselves to the latter question and observed that with the strong feeling of horror and aversion towards the sea which the people of Malabar had, no private rights could have arisen to land formed in the sea. This reasoning they elaborated in the remarks already cited.

It is contrary to all juristic notions and ideas to think that the title by escheat which the Crown has under certain circumstances, has anything to do with the title of the Crown to lands formed in the sea or in a tidal navigable river. Where the Crown claims by escheat, the property is admittedly private property, and the title of the Crown arises to this property by want of the natural heirs. In *Collector of Masulipatam* v. *Cavali Venkata Narrainappa*, [1] where this question of

1. (1860) 8 M. I. A. 500.
2. (1890) I.L.R. 13 M. 369.

the title of the Crown to take land by escheat was considered, the Judicial Committee of the Privy Council held that the Hindu Law recognized title by escheat and that, according to that law, in the absence of the special classes of heirs mentioned in the *Mitakshara* the property of a person, even though a Brahmin, would, on his death, be taken by the Crown by escheat. The subsequent remarks made would seem to raise a general question, but the view which their Lorships of the Judicial Committee took upon the question of Hindu Law was *obiter* and also the language employed would show the cautiousness with which they were made. "According to the law administered by the Provincial Courts of British India, on the death of any owner being absolute owner, any question touching the inheritance from him of his property is determinable in a manner personal to the last owner. This system is made the rule for Hindus and Mahomedans by positive regulation; in other cases it rests upon the course of judicial decisions. But when it is made out clearly that by the law applicable to the last owner, there is a total failure of heirs, then the claim to the land ceases (we apprehend) to be subject to any such personal law; and as all property not dedicated to certain religious trusts must have some legal owner, and there can be, legally speaking, no unowned property, the law of escheat intervenes and prevails and is adopted generally in all the Courts of the country alike. Private ownership not existing, the State must be owner as ultimate lord." These passages, however, do not warrant the view that in the absence of proof of private ownership the State must be presumed to be the owner. Ownership may juristically be distinguished as of two kinds: (*a*) private ownership and (*b*) State ownership, but that distinction does not in any way warrant the presumption of State ownership. Accordingly it has been held by the Judicial Committee that the state claiming by escheat must prove that there are no natural heirs or the deceased left no heirs who according to law can take the deceased's estate.

S. R. M. A. Ramaswami Chettiar v. Oppilamani Chetti.—I.L.R. 33 M. 6:—In this case a question rather of some importance has been discussed and decided.

A obtained a mortgage decree against *B*. *B* died before execution was applied for. Several persons claimed the estate of *B*,

one under a will and the others by right of inheritance. There was a dispute as regards the genuineness of the will. There was a contest but the District Registrar ordered its registration. The persons claiming by right of inheritance transferred their claims to *C*, who brought a suit to set aside the will. Pending the suit, the decree-holder applied for execution of his decree and made the claimant by devise a party to the execution proceedings. The mortgage properties were ordered to be sold, and were sold as a matter of fact, but after it was established that the will was not genuine. Thereupon the transferee applied to set aside the decree on the ground that as he, the true representative, was not represented in the execution proceedings, the sale was null and void. The High Court held that the estate was represented in law by the person claiming to be representative although his claim was afterwards found to be invalid and that it was not necessary that the true representative should be a party.

While the decree-holder knows that there are several claimants, the obvious course is to make them all parties. Knowing that there are several claimants the decree-holder chooses one of them to the exclusion of others to be made a party. One would be inclined to take what would appear to be the *prima facie* view that the decree-holder chooses the person at his peril if the person chosen by him should turn out to be not the true legal representative. There is no representation of the estate, and therefore proceedings taken behind the back of the real legal representative should be held not binding upon the latter. In the case of a suit it has been held in *Kadir Mohideen Marakkayar* v. *Muthu Krishna Ayyar*[1] that a decree obtained against one out of several legal representatives would be binding against all the representatives, including those not joined, unless the decree was obtained by fraud. That was the actual case although the remarks of the learned Judges would appear to be wider so as to support a decree obtained against one who is actually joined as legal representative of the deceased defendant but who is not the real legal representative. With all deference to the learned Judges who made those remarks, we think there is nothing to warrant this extreme view in the provisions of the Civil Procedure Code. The decision of the Calcutta High Court

1. (1902) I. L. R. 26 M. 230.

in a recent case *Harish Chandra Biswas* v. *Puridas Das*[1] may be cited as against this extreme view of the Madras High Court.

It may at first sight follow, as a corrolary from the principle, that a decree obtained against the legal representative of a deceased defendant is valid and binding against his estate, that a decree may, after the death of the original judgment-debtor be executed by bringing on the record a person whom the decree-holder alleges to be the legal representative of the deceased judgment-debtor, and that execution had against the person so brought on the record will bind the real legal representatives. That seems to be the trend of the decision in the case under notice.

The above view, however, is hardly reconcilable with the remarks of the Judicial Committee in *Khirajmal* v. *Daim*[2] cited in the case under notice. Their Lordships observed that one of the heirs of a Mahomedan could *not be held* to be his legal representative, and that, therefore, a decree obtained against such person could not bind the estate. In the particular case the heir was a minor and was described to be represented by a person who was in no legal sense or in fact his guardian and who was not appointed his guardian *ad litem*. Under those circumstances the Judicial Committee held that even the share of the heir brought on record was not affected by the decree. Where the Judge wrongly arrives at the conclusion that a person is the legal representative and a decree is passed against him, then the principle of the decision of the Judicial Committee in *Malikarjun* v. *Narhari*[3] may apply. Where the question of legal representation arises and the Judge accepts the statement on the record that a person is the legal representative, there is no decision, not even an erroneous decision, ruling, or exercise of discretion of the Judge in a matter in which the Court had jurisdiction. The learned Judges in the case under notice seem to think the decree-holder has the right against which of several claimants he may apply for execution. This is, however, ignoring the provisions of S. 244, Cl. (3), of the old Civil Procedure Code which runs thus: "If a question arises as to who is the representative of a party for the purposes of this section, the Court may either

1. (1910) 12 C.L.J. 561. 2. (1904) I. L. R. 32 C. 296.
3. (1900) I. L. R. 25 B. 337=L. R. 27 I. A. 216.

stay execution of the decree until the question has been determined by a separate suit, or itself determine the question by an order under this section." Where instead of invoking the decision of the Court under this section the decree-holder, of his own accord, chooses to elect the person against whom he desires to proceed, he takes his own risk, and cannot be heard to say that his election is binding against the real claimants although he has not chosen to bring them on the record.

The decision, however, is of no importance under the new Code as the claimant against whom the execution was asked was in possession, and as such he was an executor *de son tort* who is deemed to be the legal representative under S. 2, Cl. (11), of the new C. P. C. Further under S. 47 of the new Code, the executing Court can decide who should represent the estate of the deceased for purposes of execution, and execution had against such person will bind all claimants.

Subramania Chetty v. Mahalingasami Sivan.— I. L. R. 33 M. 41 (F. B.)—We are afraid that the correctness of the decision of the learned Judges constituting the Full Bench in this case is open to great doubt and the question decided should be reconsidered. Unfortunately the respondent was not represented and that may explain the decision. Whether the actual conclusion in the case is correct upon the facts of the case is another question. The Full Bench holds that the registered pattadar can only be regarded as the defaulter and for that purpose refers to Madras Regulation 26 of 1802, S. 3. It is not a sound rule of construction to rely upon earlier enactments unless the language used in the later enactment is similar to the earlier. In Madras Act II of 1864 the term 'landholder' is defined, and this definition is very different from the term as employed in Regulation 26 of 1802 which is repealed except as regards certain sections by the Act of 1864. According to this definition of "landholder" it is not necessary that he should be registered as he should be under the definition of this term in Madras Act VIII of 1865.

A little consideration will show that if the condition as to registry is to be insisted on as essential for a person to be regarded as a landholder within the meaning of the Act, no Government

revenue can be realized under the provisions of the Act against the legal representative of the landholder on the latter's death until the legal representative is registered in the Collector's registry. We think S. 3 of Regulation 26 of 1802 has no bearing whatever upon the consideration of the question whether a person claiming under the registered landholder is a landholder within the meaning of the Act. A person claiming by a derivative title from the registered landholder, whether by alienation or otherwise, must be deemed to be a landholder against whom process may issue under the Act if default is made in the payment of the land revenue. But whatever may be the soundness of this view, there can be no doubt that upon the plain language of S. 35 of the Act, a person *bona fide* claiming an interest in the land but not being in possession and a person claiming an interest in the land are entitled to pay the amount of the Government revenue, and the amount so paid will be regarded as a charge upon the land in favour of the person *bona fide* claiming interest in the land. In the face of this express language we cannot say how the decision in *Boja Sellappa Reddy* v. *Vridhachala Reddy*[1] and the decision of the Full Bench in the case under notice upon the construction of S. 35 can be correct. That section gives to the person *bona fide* claiming an interest a right to recover the amount paid even though such claim be adverse to the defaulter. As we said before we say nothing as to the propriety of the decision upon the actual facts of the case. Evidently the learned Judges were induced to arrive at the construction which they have placed by reference to S. 35 as it stood at the date of the original enactment and not as it stands now as amended by Madras Act I of 1897.

SUMMARY OF ENGLISH CASES.

Kent Coal Concessions, Ltd. *v.* Duquid & others.

[1910] A. C. 452.

Pratice—Discovery—"Fishing" application—Discretion of Lower Court—Interference by House of Lords.

Per *Lord Loreburn.*—This House is of course open for the reconsideration of an exercise of discretion, but it is a very exceptional case in which the House will entertain the revisal of a

1. (1906) I. L. 30 M. 35.

discretion exercised by the Court of Appeal confirming the opinion of the learned Judge. Even if I were disposed not to agree with it, I see no question of principle here and I should not be at all prepared to differ from the solution arrived at by the Court of Appeal.

Per *Lord James of Hereford.*—I should be very jealous indeed to concur in any course which would support what in former days was called a " fishing" application—that a party should set himself to work, without any case of his own, to endeavour to discover some case from his opponent.

Hordern v. Hordern. [1910] A. C. 465 (J. C.)

Partnership—Contract of, containing various terms—Surviving partner to be executor of the deceased in partner and to purchase his share at a valuation—Wrong valuation—Whether stipulation cancelled—Validity of purchase.

Two people entered into an agreement of partnership containing various terms, one of which was that on the death of one of the partners the survivor to be his executor and purchase his portion himself at a valuation. The defendant, the surviving partner, accordingly undertook the executorship on the death of his partner and purchased his share at a valuation. Plaintiffs, as residuary relatives, brought the suit, 20 years after the death, to recover from the defendant all that the deceased partner was entitled to on the day of his death, alleging that the correctness of the valuation formed a condition of the enforcibility of the stipulation and that, the valuation being incorrect, the partnership continued and the purchase by the defendant at a valuation made by him was invalid and inoperative. *Held*: that there was a valid and binding contract of partnership; that the fact, even if true, that the valuation was inperfectly conducted, was no ground for annulling the stipulation; that the correctness of the valuation was not a condition precedent for the operation of the stipulation, and that the possibility that the defendant's position as purchaser at a valuation would clash with his duty as executor of the deceased's estate did not invalidate the contract of partnership though such a possibility of a clash would make the Courts view with great scrutiny the correctness of the valuation.

Per Curiam.—A testator cannot, by appointing one of his partners as his executor, annul that partnership contract which he had deliberately entered into. It is not necessary for the person so appointed executor to disclaim the executorship in order to save his contract.

British South Africa Company *v.* De Beers Consolidated Mines, Limited. [1910] 2 Ch. 502 (C. A.)

English contract to mortgage foreign lands—Law applicable—Clog on the equity of redemption.

An English contract to effect a mortgage on land situate in Rhodesia is enforceable in England, but the law that is applicable to the case would depend entirely on the intention of the parties which is to be gathered from the contract and from the surrounding circumstances. In this case, the Court of Appeal *held*, affirming the judgment of *Swinfen-Eady* J. [(1910) 1 Ch. 354] that the intention of the parties was, to be governed by English law, and accordingly, apart from any question of the law prevailing in Rhodesia, the rule against clogging the equity of redemption applied to any mortgage effected in pursuance of such contract, and the mortgagees could not claim, after they were redeemed, an exclusive license to mine in the lands comprised in the mortgage though the contract gave it to them.

Per *Cozens-Hardy* M.R.:—"If *A*, by an English contract, agreed to give a mortgage to secure an English debt upon land in a foreign country the law of which country does not recognise the existence of * * * equity of redemption * * * and if a mortgage was given and duly perfected * * * our Courts would restrain the mortgagee from exercising the rights given by the foreign law and would treat the transaction as a mortgage in the sense in which that word is used by us. * * * * Similar observations would apply to a trustee, if the *lex situs* does not recognise the trusts."

On the unreasonableness of the doctrine of "clog"—see the observations of *Kennedy* L. J. at p 522. [See 20 M. L. J. 192].

Dillmott *v.* London Road Car Company Ld.
[1910] 2 Ch. 525 (C. A.)

"*Person*"—*Meaning of the word in legal documents*—"*Respectable and responsible person.*"

Prima facie the word "person" when used in a legal document—here a lease—is comprehensive enough to include corporations and the words "responsible and respectable" do not cut down the generality of the expression so as to make it inapplicable to corporations. Judgment of *Neville* J. in [1910] 1 Ch. 754 reversed.

In re Trevanion: Trevanion *v.* Lennox.

[1910] 2 Ch. 532.

Accumulation clause in favour of persons entitled under the limitations of the will—Tenant-in-tail after disentailing assurance—Accumulation in favour of tenant-in-fee.

A testator devised his estate to the use of his wife for life and remainder to the eldest son and other sons successively of his son, in tail male subject to an accumulation clause for the benefit of the persons entitled to possession under the limitations of the will. Upon the death of the widow, the tenant-in-tail in possession executed a disentailing assurance and claimed to be entitled to the profits apart from the accumulation clause.

Held by *Joyce* J. that he was so entitled. This was his Lordship's reasoning: He became a tenant-in-fee by the exercise of the power involved in the grant in tail; as such his larger estate also must be reckoned as one coming to him under the limitations of the will; now, an accumulation clause in favour of the person in whom the property is vested absolutely is void; as owner of the corpus therefore, he was absolutely entitled to the profits.

In re Amalgamated Society of Railway Servants: Addison *v.* Pilcher. [1910] 2 Ch. 547.

"*Resulting trust*"—"*Trust under will void for illegality*"—*Orginating summons.*

When a trust declared by an instrument is void for illegality, the settlor claiming by way of resulting trust is not "a *cestui que trust* under the trust of the instrument" and therefore cannot enforce the trust by an originating summons under order LV., r. 3.

Attorney-General *v.* Westham Corporation.

[1910] 2 Ch. 560.

Municipal Corporation—Power to borrow for specific purpose —Fund cannot be applied to other purpose.

Where a Municipal Corporation is authorised by statute to raise money for a certain purpose, it cannot apply the money to any other purpose though such purpose might be one to which corporation funds might legitimately be applied.

JOTTINGS AND CUTTINGS.

Oaths by Telephone.—A recent case in the California Court of Appeals (*Fairbanks Morse* v. *Getchell*[1]) discusses telephoning on oath across a county line to a notary public out of the jurisdiction of the affiant, and holds that such an oath is void. The case assumes for the purpose of argument that an oath administered by means of a telephone would be valid if the affiant were in the same county as the notary when he makes it, as decided in a Texas case. We are not aware of any case in this country which decides the question as to whether an oath can be administered by telephone, but we should imagine that such a proceeding would be invalid. An affidavit cannot well be said to be "sworn before me," etc., when the parties are miles apart, though they may recognize, or think they recognize, each other's voices. In cases of contract the rule may well be different. Whether the language we now quote from the *Central Law Journal* in reference to the above case is the effort of the editor of that excellent journal, or is an extract from the judgment of the Californian Court we know not, but it is an oasis in the dry desert of legal literature which might appeal to some of those who agree with the thought expressed by one of our Judges in this province who thinks (and to a certain extent we concur) that there is no reason why legal propositions and arguments should not be stated in language seeking some literary excellence, lightened occasionally by appropriate illustrations or gems of thought which others might perhaps think foreign to the dry atmosphere of a Law Court. We do not know what his views

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1. 110 Pac. 331.

would be as to the following reference to the question at issue in the above case:—

"This is a curious kind of ubiquity. You talk to it at a distance, and yet it is at your elbow. It identifies you by your voice, and immedialely it puts in motion, at a distance, a physical agency wielding a pen and an official seal, guided there by the mentality it encases. This official essence floats around you in a sort of psychological way, and yet that physical agency is so much a part of itself that, if it is destroyed, this essence goes out of existence or perhaps is in suspended animation, until the physical agency's successor is found."—*Canada Law Journal.*

* * *

The Revolution in Portugal and International Law.—The revolution in Portugal irresistibly directs attention to some leading principles of public international law. It is the privilege of every State to adopt any form of government it deems best suited to its internal wants and conditions, and its identity is never lost so long as its corporate existence is preserved. While that is preserved, no internal revolution can diminish any of its rights or discharge it from any of its obligations. Neither a change in the person of its ruler nor a complete transformation in the internal organization of its government can affect the treaties or public debts of a State so long as the corporate identity remains. It can be safely assumed that the corporate identity of Portugal has not been affected by the revolution. How, then, does Portugal stand in her relations with other Sovereign States? All States are forced, in their actual dealings with each other, to accept the doctrine that the government *de facto* must finally be recognized. Dr. Hannis Taylor, the eminent United States Jurist and former Minister Plenipotentiary to Spain, writes: "Even in monarchical countries, in which ideas of legitimacy and Divine right are at the root of State institutions, while there is a greater prejudice against the acceptance of a new *regime* founded on revolution, it is practically impossible for their administrators to hold out against accomplished facts. While the European governments refused to recognize the French Republic of 1792, because of its instability and objectionable character, they found it convenient to recognize successively the revolutionary governments of Louis Philippe in 1830,

of the Republic in 1848, and of the Empire in 1852."—TAYLOR'S *International Public Law*, p. 196. The recognition of the government *de facto* of Portugal very clearly falls within the application of the doctrine thus expounded and illustrated.

The effect of the revolutionary change in the person of its ruler in Portugal on the status of diplomatic agents may be thus outlined. If after a Minister, as in the case of the Portuguese Ambassador to this country, has been accredited to a State and received by it, a revolutionary change takes place in the government of the State from which he comes, his functions are rather suspended than terminated, and during such suspension he is entitled to the immunities and respect due to his station. Every prudent government is careful not to decide prematurely by a formal reception of envoys from a *de facto* power, whether or not the real sovereignty has actually passed to such power. In order to relieve the State to which such envoys are sent from making any formal or positive decision on that subject, they sometimes go in the anomalous character of agents clothed with the powers and immunities of ministers without being invested with the representative character or entitled to diplomatic honours. If, on the other hand, after a minister has been duly received, the government to which he is accredited is forcibly overthrown and another substituted in its place which his own country recognizes, his status is unaffected. If, however, his own country fails to recognize the new government, it is usual for a minister to continue to enjoy the immunities originally belonging to him, although it is a grave question whether his State could claim for him such immunities as a right while it refuses to invest him with the representative character, or to recognize the lawfulness of the government upon which such claim would have been made —see TAYLOR'S *International Public Law*, pp. 324 & 325.—*Law Times*.

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Judicial Tenure in England.—The recent establishment of two new judgeships has led a writer in the lay press to direct public attention to the fact that there is much misapprehension in reference to the tenure of the judicial office. It is popularly believed that a judge is removable by, and only by, an address of both Houses of Parliament to the Throne, whereas the tenure

of judges established under the provisions of the Act of Settlement, which is that of good behaviour (*quam diu se bene gesserint*) instead of at the royal pleasure (*placito rege*), places their dismissal still within the power of the Crown in certain contingencies. Independently of the Parliamentary method of procedure for the removal of a judge under the Act of Settlement, the legal effect of their tenure of office during good behaviour furnishes the Crown with a remedy to which recourse may be had in the event of misbehaviour on the part of those who hold office by this tenure. An opinion of the Law Officers of the Crown in 1862—Sir Willam Atherton, who was then Attorney-General, and Sir Roundell Palmer (Lord Chancellor Selborne), who was then Solicitor-General—deals with the circumstances under which a patent office may be revoked. They state, in reference to the kind of misbehaviour by a judge that would be a legal breach of the conditions under which the office is held, that when a public office is held during good behaviour, a power of removal for misbehaviour must exist somewhere, and when it is put in force the tenure of the office is not thereby abridged, but is forfeited and declared vacant for non-performance of the condition on which it was originally conferred. To the same effect Mr. (Lord Chief Justice) Denman stated at the Bar of the House of Commons, when appearing as counsel on behalf of Sir Jonah Barrington, who was eventually removed from the Judgeship of the High Court of Admiralty in Ireland by the Crown on an address of both Houses, that, independently of a Parliamentary address or impeachment for the removal of a judge, there were two other courses open for such a purpose. These were (1) a writ of *scire facias* to repeal the patent by which the office had been conferred; and (2) a criminal information in the Court of King's Bench at the suit of the Attorney-General. By the latter of these especially the case might easily be determined.—*Mirror of Parliament*, 1830, p. 1897. It is evident that the Crown is duly empowered to institute legal proceedings against the grantee of a judicial or other office held, during good behaviour, for the forfeiture of such office on proof of misbehaviour therein—see TODD'S *Parliamentary Government of England*, II, pp. 726-729.—*The Law Times.*

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Defamation: Publication of fiction purporting to be "news" —A Libel without justification.—The circumstances of the case of *Snyder* v. *New York Press Co.*,[1] were somewhat extraordinary. A short newspaper article was published to the effect that, upon the assurance of a process server that Mrs. Snyder was anxious to see him, the native Irish maid admitted him to the bath room while she was in the bath tub; that the mistress screamed, but was nevertheless served with a subpœna; and that motion was made to have subpœna vacated on the ground that it was impossible for the process server to identify her under the circumstances. Defendant contended that the article was innocent and belonged to the class generally recognized as having a "news value." The Appellate Division of the Supreme Court of New York held that it was difficult to perceive what news value it could have, and impossible to discover its literary value, and that if newspapers saw fit to give their readers fiction instead of news, they did so at their peril. In the opinion of the Court it was libellous, as holding plaintiff up to ridicule and lowering her character in the estimation of the community.—*Canada Law Journal.*

* * *

Impatience at the Bar.—Lord Westbury, when at the Bar, was an impatient man with his juniors. On one occasion a junior repeatedly urged his leader to take a certain point, which the latter persisted was contemptible. The case went badly, and at last the leader took his junior's advice. The argument produced a marked effect on the Judge, and in the end judgment was given for Lord Westbury's client. After glancing at the Judge, he turned round to his junior: "I do believe," he muttered coldly, "this silly old man has taken your absurd point."—*Ibid.*

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Privy Council Appeals.—Order—No. 1578, *Judicial, dated 22nd October* 1910.—The attention of Government has been drawn to the desirability of giving fresh publicity to the fact that, save in respect of such special appeals as the law permits to the Privy Council, appeals do not lie in England from the decisions of Indian Courts, and that no petitioners,

1. 121 N. Y. Suppl. 944.

other than appellants to the Privy Council prosecuting their appeals according to the prescribed rules, will obtain a hearing in England. A notification on this subject was published by Government in 1890, and the Governor in Council is now pleased to direct that the following notification be again published.

Notification :—It is hereby notified, for general information, that, except in regard to such special appeals as the law permits to the Privy Council, no appeals lie in England from the decisions of Indian Courts, and that no petitioners, other than appellants to the Privy Council prosecuting their appeals according to the prescribed rules, can obtain a hearing in England from His Majesty the King-Emperor. Petitioners proceeding to England, otherwise than for the purpose of appealing to the Privy Council where such appeal lies, merely waste their money and expose themselves to great inconvenience and hardship, including the risk of finding themselves unable to return to India.

2. The Honourable the Judges of the High Court are requested to be so good as to issue orders for copies of the notification being posted up in all Courts with translations in the respective vernaculars of the districts.

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The Law Officers' Appointments.—In the House of Commons MR. BOTTOMLEY asked the Prime Minister what was the difference between the duties of the Attorney-General and the Solicitor-General respectively; and whether, having regard to the number of other legal appointments in connection with the various public departments, he would consider the desirability of appointing only one Law Officer.

MR. ASQUITH: In addition to the ordinary duties of a Law Officer which are discharged by the Attorney-General and the Solicitor-General, the Attorney-General alone can act in certain matters; for example, all criminal as well as other proceedings instituted by the Crown are under his control and subject to his direction, and the King's Proctor acts only under his directions. His consent is also required for the institution of many proceedings brought to protect public rights. There are

numerous other important functions vested in the Attorney-General, alone of which the above are only instances, and I am satisfied from experience that the work of the country could not be effectively done with less than two Law Officers.

MR. BOTTOMLEY: Why is the second Law Officer called the Solicitor-General? If his duties are those of a solicitor, why does not a solicitor get the job?

MR. ASQUITH: The title and the office came to us from a remote antiquity. I shall be happy to confer with the hon. gentleman on the matter privately. (Nov. 21.).—*Law Journal.*

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Arrears in the King's Bench Division:—MR. WATT asked the Attorney-General if he could give the House any information as to whether the arrears of cases in the King's Bench Division had in any way been reduced by the appointment of the two new Judges sanctioned by Parliament in the early part of this session.

THE ATTORNEY-GENERAL:—I am informed that substantial progress has already been made with the cases in the King's Bench Division, and it is anticipated that before many months have passed the judges will be abreast of their work.

MR. BOWLES:—May I ask whether the judges are now either sitting for a longer period on Saturdays or for an extra half-hour on other days?

THE ATTORNEY-GENERAL:—I believe it is a fact that they are either sitting a little longer on ordinary days or taking cases at effective sittings on Saturdays. (Nov. 23).—*Law Journal.*

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A Legal Memorial to King Edward.—The Benchers of the Middle Temple, in determining to commemorate the late King's long and intimate association with their Inn, have taken a step which will be cordially welcomed by the Bar, of which for nearly fifty years his Majesty was a member. A 'King Edward VII Memorial Fund for Legal Study and Research' is to be established, for which the Benchers will provide by setting apart annually on November 9—the anniversary of the late King's

birthday—the sum of one hundred guineas. This sum is to be applied in assisting members of the Middle Temple to pursue study and research connected with English and foreign law, constitutional law, comparative legislation and legal history, and such other subjects connected with the profession of the law as the Benchers may deem worthy of assistance. It may also be bestowed as a reward for the result of past study and research in the same connection. The Benchers could not have decided upon a more acceptable form for the memorial to take, for the English legal world is at present lementably lacking in provision for the pursuit of the higher kinds of legal study and research. For adequate provision for legal scholarship we must wait until the available funds—the proceeds of the sale of New Inn and Clifford's Inn—are utilised for the creation of a great School of Law; and it may be regretted that the Benchers of the Middle Temple, who, led by Sir Robert Finlay, have always been strongly in favour of the establishment of such a school, have not had an opportunity of associating their fund with that scheme. The Benchers have also decided to commemorate King Edward's association with the Inn by naming some building in the Temple after him. His Majesty's connection with the legal profession was so intimate—and the members of the Law Society, the additional wing of whose Hall he opened in 1894, as well as the members of the Bar may take a legitimate pride in the fact—that all the governing bodies of the legal world might well combine to commemorate his reign. Where would a statue of 'Edward the Peacemaker,' be more appropriate than in the Royal Courts of Justice?—*Law Journal.*

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Prisoners and their Solicitors and Counsel:—In a case before his Honour Judge Rentoul at the City of London Court, on November 29, he refused to enforce payment of a promissory note made payable one week after date, and given under the following circumstances: A man who was under trial at the Old Bailey had employed solicitor and counsel; he and his surety made the note in question, and on its dishonour set up that it had been obtained by duress and fraud, and been extorted on the second day of the trial under threat that if it was not signed neither solicitor nor counsel would go on with the case. The learned

judge, though he did not find either duress or fraud, came to the conclusion that payment of the note should not be enforced in a Court of Justice. In substance, his view seems to be that the lawyers of a prisoner are not entitled to retire from defence during the trial because they have not been paid, so leaving the prisoner in the lurch. We are not concerned to express any opinion on the different versions given by the parties to this particular transaction, but it is a sound rule, so far as the Bar is concerned, that if instructions are accepted to defend a prisoner, though not completed by receipt of the brief fee, counsel should not during the case retire because the fee is not paid; and there seems to be no sufficient reason for making a distinction on this point with respect to solicitors. The position is, of course, made difficult for the solicitor if the prisoner gets him to take up a defence on a promise or representation that the necessary money will be provided by the day of trial, and on that day it is not forthcoming ; but there are legitimate means for providing against that contingency, and the insistence on a bill or note during the actual progress of the trial is not among these. It is to be hoped that the Law Society and the Bar Council will make full inquiry into this matter. It is unfortunate that allegations such as these should be brought against the honour of members of the profession without adequate opportunity being afforded them of clearing themselves in the eyes of their brethren.—*The Law Journal.*

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The Legislature and the Judiciary.—No subject could have been more appropriate than that which Lord Shaw chose for his lecture at University College last week, and nobody is more suited than he to deal with it, for he took a prominent part in the recent decision of the House of Lords in Osborne's Case, which has made the relation of the Judiciary and the Legislature one of peculiar public interest. The suggestion that the House of Lords in its judicial capacity deliberately perverts or strains the meaning of Acts of Parliament is as ungrounded as it is mischievous, but it is not unnatural that the ordinary statute as interpreted by the courts does not carry out the intentions or the promises of the persons who promoted it. The ault lies not in the artfulness of the judges, but in the artless-

ness of the legislators. In truth, the present procedure of Parliament is little calculated to produce clear and explicit law. A bill may be excellently drafted originally, but by the time it has passed the ordeal of amendment in two Houses, it is often a misshapen and ambiguous mass of complex provisions. Several foreign Legislatures regularly append to new laws a *rapport*, or commentary, which is drawn up by the author of the Act, and is regarded as an authoritative interpretation of its terms. Such a report is appended to 'The Declaration of London,' and would presumably be binding upon an English Prize Court applying that convention. But what Lord Shaw proposed as the solution of our present legislative muddles was the appointment of a small and expert body to revise bills which had passed through Parliament, and to make such amendment as was necessary in the drafting of the sections in order to secure that its object was properly attained. The bili thus revised would be submitted to the two Houses for final approval. It is notable that John Stuart Mill advocated a change of the kind, or rather that he proposed to convert the House of Lords into a small and expert revising Chamber for this service. Yet even if the change were made, the Judiciary would still be called upon to determine the true effect of a statute and to bring its provisions so far as may be into accord with the broad principles of the Common Law; for it is the splendid function of the judge not only to determine the particular litigation between individuals, but to develop the whole of our law into a harmonious whole so that the innovation of the legislator may be tempered by the established traditions of the people.—*The Law Journal.*

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A Juror's Definition.—Ex-Governor Hughes of New York, the new member of the Supreme Court of the United States, recalls an incident happening when he was a law-clerk in the office of Chamberlain, Carter and Hornblower.

A man was being examined by one of the firm with reference to his qualifications as a juror in an important case, involving a considerable sum of money.

" You understand," said the lawyer, " what is meant by a preponderance of evidence ? "

"Yes, Sir," replied the other, promptly.

"Let me have your idea of it"

"I understand it, I tell you."

"Well, what is it?"

"Why, anybody can understand that."

"I would like to have your definition of it."

"I know what it is," replied the man, hotly. "When I tell you I know what a thing is, I know it. That's all there is about that."

"Well, what was the question I asked you."

"You ought to know what that was. If you've forgot your own questions, don't try to get me to remember them for you"

"I don't want to hear any more of that kind of talk," interposed the court. "Answer the questions addressed to you by the counsel."

"Judge, I did. He asked me if I knew what it was, and I said I did."

"Are you sure you understand what is meant by the term, 'preponderance of evidence'?" asked the court, sharply.

"Of course I am, Judge."

"Define it, then."

"It's evidence previously pondered."—The *Green Bag*.

NOTIFICATIONS.

Election of Members of Taluq Boards.—Under clause (i) of section 144 of the Madras Local Boards Act, 1884, the Governor in Council is pleased to make the following alterations in the rules framed for the conduct of elections of members of Taluk Boards and published under Notification No. 497 at pages 290 to 308 of Part I-A of the *Fort St. George Gazette*, dated 13th April 1909. The Governor in Council further directs, under section 146 of the said Act, that the alterations shall come into operation in all districts on the first April 1911:—

(1) In line 2 of the definition under clause (2) of rule 4 after the words "undivided families" and in line 5 of the same definition after the words "such family" and also in line 5 of clause (1) of rule 9 after the words "undivided families" the

words "joint pattadars" shall be inserted and in lines 6 and 7 of the said definition the words "or other" shall be inserted after the word "its" wherever it occurs.

(2) For the first sentence of clause (3) of rule 9 the following sentence shall be substituted :—

"The officers specified in the notice issued under clause (1) "of this rule shall, on the first day of September or as soon as "possible thereafter, forward to the Divisional Officer the lists "for each circle, of persons falling under clauses (*a*), (*b*) (*d*), (*e*) "and (*f*) of rule 4 or clauses (*a*), (*b*) and (*d*) of rule 7 whom they "have accepted under clause (2) and of persons falling under "clauses (*c*) and (*g*) of rule 4 or clause (*c*) of rule 7 who have "registered their names under clause (1) of this rule, and "extracts from the lists so forwarded shall, on or before the "thirtieth day of September, be published in Forms A and B of "Schedule II in the District Gazette together with a notice "stating that any objections thereto may be made to the officers "named in clause (1) of this rule within the thirty-first day of "October and specifying the place at which the Divisional "Officer will dispose of any objections so preferred."

(3) For clause (*d*) of rule 13 the following shall be substituted :—

"he holds a salaried office under a Local Board."

CONTEMPORARY LEGAL LITERATURE.

"The meaning of 'Fire' in an Insurance Policy" is the heading of a very interesting and instructive article in the *Harvard Law Review* for December. The writer, Mr. Edwin H. Abbot, discusses the subject under various aspects, namely :—(1) the essential of contingency that is implied in all insurance contracts; (2) the light in which negligence is looked upon in insurance cases; (3) the meaning of "fire" as understood in insurance cases; (4) the ingredient of *accident* in so far as it is made essential to a recovery; (5) the tests of the accidental character of the fire; (6) The measure of damages when the fire is partly accid ental and partly intentional; and after a discussion of the leading American cases summarises his discussion neatly as follows :—

1. Fire within the meaning of an ordinary insurance policy

means combustion which is accidental with respect to the insured, accompanied by visible flame or glow.

2. If the insured, or one for whom he is legally responsible, kindles a fire with intent to injure the premises insured, such fire is not fire within the meaning of the policy for want of the accidental quality.

3. If the insured, or one for whom he is legally responsible, kindles a fire for some useful purpose and without intent to do injury, in a place intended and provided for said fire, such fire while confined within such place is not fire within the meaning of the policy, and any damage done thereby by smoke or heat is not recoverable.

4. The reasoning of the cases and of the text-writers indicated that the same rule would be applied even though such fire so kindled in the place intended therefor were excessive or of unusual size, but the rule in Wisconsin is the other way.

5. If the fire intentionally kindled in a place provided therefor, accidentally causes combustion accompanied by flame or glow outside the limits of the place where the original intentional fire was kindled, the second, or accidental, fire is fire within the meaning of the policy, and any damage done by such accidental fire is recoverable.

6. It seems to follow that where damage is caused in part by an intentional fire and in part by an accidental fire, only such damage as was caused by the accidental fire may be recovered.

In a word, fire, as used in an ordinary fire policy, means fire which is accidental with respect to the insured. Moreover, the accidental quality must attach to the fire itself. An intentional fire plus accidental damage do not constitute accidental fire. In such a case the accidental quality attaches to the loss alone and is no part of the flame which caused the loss. But it is the cause of the loss, not the occurrence of loss, which determines whether there may be recovery. A fire kindled by the insured in a place provided therefor is an intentional fire. It cannot acquire the necessary accidental quality because smoke or heat evolved thereby does damage. The lack of this essential accidental quality *in the fire itself* is fatal to recovery."

The *Green Bag* for December 1910 opens with a very interesting article on Mr. Justice Darling of the King's Bench Division of the High Court of Justice and says that an appointment considered to be a jobbery when it was made has proved to be a very admirable appointment in the long run as it did in other cases like that of Blackburn by Lord Campbell. It goes on to add that Mr. Justice Darling belongs to that limited number of Judges who temper their knowledge of law with knowledge of human nature and letters. The article is not merely a sketch of the life-history of Mr. Justice Darling and his qualities as a Judge but is an interesting *resume* of the English judicial system and its admirable characteristics.

BOOK REVIEWS.

The Malabar Compensation for Tenants Improvements Act I of 1900: By A. V. GOVINDA MENON, B.A. B.L., *High Court Vakil*, Calicut. Messrs. Higginbotham & Co., Mount Road, Madras. Price Rs. 2.—This is a commentary on the Malabar Compensation for Tenants Improvement Act, I of 1900, and will be particularly useful to Malabar practitioners. The cases under each section have been carefully selected and the notes are full. We trust the book will be found useful to those for whom it is intended.

Principles of Liability for Interference with Trade, Profession or Calling: A thesis approved by the University of Calcutta for the degree of Doctor of Laws. By SARAT CHANDAR BASAK, M.A., B.L., *High Court Vakil*, Calcutta.—The author has published, in pamphlet form, the thesis which he had to write for his obtaining the degree of Doctor of Laws of the Calcutta University. There is an interesting and learned discussion on the subject dealt with and much useful information is contained in the pamphlet.

Kerr on Fraud and Mistake:—By SYDNEY EDWARD WILLIAMS, *Barrister-at-Law*: 4th Edition. Sweet & Maxwell, Limited, London. Price 25 *s.*—No introduction is necessary for such a standard work as KERR on *Fraud and Mistake.* The last edition was in 1902 and eight years is long enough for the publication of a new edition. Moreover, since the last edition there has been a fairly large number of decisions on the subject and

many important alterations in the law. All these decisions and the alterations have been embodied and the book has been thoroughly revised. The editor must be congratulated on his successful revision of the book without increasing its dimensions. We have no doubt that the present edition will be found useful by the members of the profession.

The Detection of Forgery: A Practical Handbook: By D. BLACKBURN and CAPTAIN WAITHMAN CADDELL. Charles and Layton, Farringdon Street. Indian Agents Messrs. R. Cambray & Co. Price 6*s*.—This is a practical book for detecting forgery. The authors have given very useful suggestions for the detection of forgery. We think the book will be found useful by bankers and members of the Bar and the Bench.

A Digest of English Civil Law. EDWARD JENKS, Book II, Part III. *Torts*: Concluded by J. C. MILES Butterworth & Co., London.—This part deals with the remainder of the branch of the Law of Torts. The portions dealt with are those relating to the personal, domestic and contractual relations, conspiracy, administration of justice, reputation. The author has added a section dealing with Torts in respect of public rights, execution and distress, and a section on deceit. It is difficult to follow the author's headings and the order in which he bases them, but in all departments of law, and especially in one relating to Torts, it is difficult to have scientific and logical headings exclusive of one another. One special feature in the treatment of the subject by the editors is the subject of 'negligence' which is treated by most writers on Torts under a separate heading but which is only a ground of liability in specific cases and the editors have succeeded well in introducing the subject under appropriate headings. The principles are stated succinctly and accurately and the present part maintains the reputation of its predecessors and we have no hesitation in commending the book to students and practitioners.

The Hindu Law of Inheritance: By SIR ERNEST JOHN TREVELYAN, D. L., lately a Judge of the High Court, Calcutta. Messrs. Thacker Spink & Co., Calcutta. Price Rs. 12. 1910.—This is a companion volume to Trevelyan's work on Family

Law. The author deals with a most difficult subject—the Hindu Law of Inheritance. The author is pretty accurate in stating his principles wherever these are based upon case-law. With respect to the Mitakshara Bandhus the author states the conclusions of Sarvadikari and Siromani, which have now become altogether exploded. The author, of course, wherever there are express decisions contrary to the order stated by the above writers, notes the facts with the references. He, however, makes no attempt to discuss their views nor to note how the other principle cannot be equally good if the principles gathered from the decided cases or the texts are logically reasoned out. Thus the author apparently adopts as correct Sarvadhikari's and Siromani's classification of the mother's father's father and his descendants and the mother's paternal grandfather's father and their descendants as *Atma Bundhus ex parte paterna*. They are according to the express statement of Vijnaneswara, *Matru Bandhus*. The book, however, makes an attempt to work out the order of succession, though without discussion, and the author must be congratulated upon the attention and labour bestowed by him upon one of the most difficult subjects of the law.

The Law Relating to Waters: By H. J. W. COULSON, B. A., and W. A. FORBES, *Barristers-at-Law*. Third Edition, 1910. Messrs. Sweet and Maxwell, Limited, London, Price 37 *s*. 6 *d*.—Scarcely any recommendation is necessary for such a work as the *Law of Waters* by Messrs. COULSON and FORBES which has now come to be recognised as a standard treatise on the subject. The last edition was published in 1902 and since then there have been more than 300 cases decided in the English and Irish Courts and various Acts of Parliament have been introduced on the subject. The present edition maintains the reputation of its predecessors and altogether we think it will be found useful to the profession.

Henderson's Criminal Procedure Code: Eighth Edition: By HARI BHUSHAN MUKERJI, *Vakil, High Court. Calcutta* Thacker Spink & Co. Price Rs. 22-8 0.—This is a revised petition of Mr. Henderson's Commentary, on the Code of Cri-

minal Procedure. Since the publication of the last edition in 1905 the author, a Judge of the Calcutta High Court, died, and the revision was undertaken on behalf of the publishers by the present editor, Hari Bhushan Mukerji, a Vakil of the Calcutta High Court, himself the author of an annotated edition of the Criminal Procedure Code. Mr. Henderson's book was found eminently useful both by the Bench and the Bar and the present editor has spared no pains to maintain the standard of the previous edition and to increase further the usefulness of the book. He has embodied the cases from the non-official reports without exception. The size of the book is rather unwieldy, but being the first attempt to revise the work of another, there must have been considerable difficulties in keeping to its original dimensions or reducing its size. We hope that the book will be found useful by all those concerned with Criminal Law and Procedure.

Sohoni's Code of Criminal Procedure: Seventh Edition: By N. T. SHAMANNA, B. A., B. L., *Vakil, Madras High Court.* Madras: Addison & Co., Mount Road. Price Rs. 16.—Mr. Sohoni's commentaries have been remarkably popular with those concerned with the administration of criminal justice. The last edition was published in 1908 and within a short space of two years a fresh edition has become necessary. The work of editing has this time fallen upon Mr. N.T. Shama na, a Vakil of the Madras High Court. All cases up to the end of August 1910 have been embodied. We feel no hesitation in commending the book to Judges, Magistrates and the profession.

The Travancore Law Journal. Edited and published by K. G. Paramasvara Menon, B. A , B. L. Vakil High Court, Travancore. Printed at Subodhini Press, Travancore; Subscription Rs 6. per annum. We owe an apology for not noticing earlier this new venture made by some of the members of the Travancore Bar. The fact that the work of reporting is in the hands of a clerk of the Travancore High Court not being a member of the Bar is itself a sufficient justification for the present publication apart from other reasons mentioned in the prospectus. We wish every success to the learned editors in their new venture.

The Law of Legal Necessities and Obligations: By HARIDAS CHATTERJEE M.A., B.L., *Pleader, Khandwa* assisted by P.R. CHATTERJEE, 1910. Messrs. R. Cambray & Co., Calcutta. Price Rs 8.—The subject-matter suggests a wide field for inquiry and discussion but apparently the author has confined himself to what has become a familiar term in Hindu Law—legal necessity. The question of legal necessity arises in Hindu Law in the case of alienations by widows, of members of a joint Hindu family, and by guardians, etc. The author discusses the Hindu Law texts and the decided cases bearing on the subject. He does not content himself with noting merely the effects of the cases but subjects them to criticism wherever he thinks necessary. On the whole the learned authors have taken great pains in presenting in a readable form the mass of the case-law bearing on the subject and in stating the principles accurately. We commend the book to the profession.

The Examination of Witnesses in Court: By F.H. WROTTESLEY, *Barrister-at-Law*. Sweet and Maxwell, Limited, London, 1910. Price 5 *s*.—This is a book which will be found useful by members of the profession, especially beginners. Some matters relating to professional etiquette are also stated.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

The Law relating to Electrical Energy in India by the Electrical Adviser to the Government of India.

Confessions and Evidence of Accomplice by P. N. Chaudri: Second Edition, 1910.

The Workmen's Compensation Act, 1906, by Addington Willis: Eleventh Edition 1910. Messrs Butterworth & Co. Price 5 *s*.

The Indian Railways Act IX of 1890 by Dayabhai Ijat Ram and Popat Lal Amthasa Shah. Pleaders, Ahmadabad, 1910.

Hindu Law, by J. R. Gharpure, B.A. L.L.B. Vakil, High Court, Bombay. Second Edition, 1910. Price Rs. 5-8-0.

The Solicitor's Clerk, Part II, by Charles Jones, 5th Edition, 1910. Effinghan Wilson, 54, Threadneedle, Street.

The Mahommadan Law of Inheritance by M. M. Ishfak, B.L., Vakil High Court, Calcutta, 1910.

Travancore Almanac, Directory for 1911.	
Allahabad Law Journal for	January 1911.
Calcutta Law Journal	Do.
Calcutta Weekly Notes	Do.
Kathiawar Law Reports	Do.
Law Notes	Do.
Law Students' Journal	Do.
Punjab Law Reporter.	Do.
The Law Journal	Do
The Lawyer	Do